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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

Modification of Part 90 of the  
Commission's Rules and Regulations  
to Replace Section 90.655 End User  
Licensing Requirements with an SMR  
Certification Procedure

PR Docket No. 92-79

To: The Commission

COMMENTS

Respectfully submitted,

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## TABLE OF CONTENTS

SUMMARY.....	ii
I. INTRODUCTION.....	1
II. BACKGROUND.....	2
III. DISCUSSION	
A. Proposal #1: Elimination of Separate End User Licensing.....	3
B. Proposal #2: Loading Data and Filing Requirements for Licensees of Trunked Specialized Mobile Radio Systems.....	8
C. Proposal #3: Relaxation of Requirements for Trunked Specialized Mobile Radio Licensees to Modify Licenses.....	12
VI. CONCLUSION	

## SUMMARY

AMTA supports the Commission's proposal to eliminate SMR end user licensing requirements, and instead permit end user customers to operate pursuant to the base station licensee's authorization. The regulatory system contemplated by the FCC would calculate system loading based on routinely maintained SMR business records, a more accurate reflection of spectrum utilization than the current standard. While AMTA recommends that the Commission modify somewhat both the SMR operator's responsibility for certain unauthorized actions by its customers and the method by which loading would be calculated, the Association endorses the proposal generally as publicly and privately beneficial.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.<sup>1/</sup> AMTA welcomes the Commission's proposal to replace its SMR end user licensing scheme with a system whereby SMR customers will be authorized to operate under the term and conditions of the associated base station licenses. The Association believes that the regulatory structure proposed will, with minor modifications, conserve valuable public and private resources without inhibiting appropriate FCC oversight of SMR licensee compliance with FCC loading requirements.

#### I. INTRODUCTION

AMTA is a nationwide, non-profit trade association whose voting membership represents the majority of operational SMR systems in the nation. The Association's members provide both trunked and conventional SMR service to hundreds of thousands of end user customers. Under the current regulatory structure, each of these customers must be individually licensed for the mobile and control units it operates. Licensing, modifying and renewing these authorizations is a significant burden for the system operator and for the FCC whose resources could be more productively used for other purposes. Thus, AMTA has a significant interest in the outcome of this proceeding.

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<sup>1/</sup> Notice of Proposed Rule Making, PR Docket No. 92-79, FCC 92-172 (released May 5, 1992) ("Notice").

## II. BACKGROUND

SMR systems providing trunked or conventional two-way mobile communications service to eligible customers have utilized a two-tier licensing scheme since their creation almost two decades ago. The SMR entrepreneur offering the service holds the authorization for a single frequency conventional or a multi-frequency trunked base station facility. Each customer on the system is then individually licensed by the FCC for the mobile or control stations operated by that user.

The Notice states that the Commission receives approximately forty thousand (40,000) new, modification and renewal end user applications each year. Notice ¶4. This volume of applications continues despite a number of rule changes adopted over the past ten years to simplify end user licensing procedures. Notice ¶3.

The Commission has now proposed to eliminate altogether the individual end user licensing requirement. It would instead permit SMR customers to operate pursuant to the base station licensee's authorization just as customers of private carrier systems below 800 MHz may be authorized under the carrier's own authorization. See, 47 C.F.R. §90.179(c). Under the Commission's proposal, the SMR licensee would assume responsibility for maintaining operational control over customer mobile and control stations, including responsibility for compliance with Federal Aviation Act (FAA), National Environmental Policy Act (NEPA) and FCC rules. The Commission would rely on business records maintained by SMRs to calculate

system loading rather than a review of the station's loading records. In addition, the FCC proposes to eliminate the SMR annual loading report requirement, and to relax the modification requirements for trunked SMR licensees.

AMTA supports the Commission's objective of replacing the current end user licensing structure with a less burdensome approach, one which more accurately reflects the SMR industry's evolution toward multi-site, network system designs. The Association has twice recommended that end user licensing be replaced with an SMR operator reporting requirement. Its most recent Petition was filed only months ago, and some of the proposals have been incorporated in the instant Notice. The Commission's proposal provides a framework for implementing a regulatory scheme which, with certain modifications, will satisfy the FCC's and the SMR industry's objectives and advance the public interest.

### III. DISCUSSION

#### A. Proposal #1: Elimination of Separate End User Licensing

The current system of licensing, modifying, remodifying and renewing end user authorizations no longer serves the public interest. The scheme was adopted at a time when all entities which operated transmitting equipment held individual authorizations -- even CB users. It was also a time when SMR customers typically used only a single system in a market. Users such as those in the San Joaquin agricultural community which have traditionally utilized multiple facilities throughout their

extended operating area were a distinct exception. Thus, in the original SMR environment, end user licensing was a regulatory "given," and not excessively complicated since customers typically had a long term relationship with a single SMR operator who handled all licensing requirements.

The current situation is significantly different. First, both government and industry have every incentive to address severe economic constraints by streamlining regulatory requirements where appropriate. The system proposed by the FCC in the instant Notice will not diminish the FCC's ability to evaluate SMR system loading, but will eliminate the mountain of paperwork currently associated with performing that assessment by reviewing end user licensing records.

In addition, the growing need of SMR customers for wider-area capability has made the existing scheme increasingly unwieldy. It is no longer unusual for users to roam throughout a metropolitan or even broader area using multiple SMR systems. In some cases, the systems are commonly owned or managed; in others, there is no connection between the SMR operators other than common customers. Since the present system allows the customer to be licensed on, and therefore claimed for loading on, any facility on which it operates, there are endless tug-of-wars as the user is persuaded repeatedly to modify the loading credit from one system to another by modifying the license. This exercise benefits no one since it does not depict more accurately the actual usage on the systems involved. Nonetheless, it

requires substantial public and private resources to accomplish.

For these reasons, AMTA supports the FCC's proposal to allow SMR customers to operate pursuant to the base station operator's authorization. The SMR licensee not only has the capability to exercise operational control over customer units as described in the Notice, but can be expected to have a knowledge of FCC and related requirements which far exceeds that of the typical end user customer. Notice ¶5. Therefore, to the extent that the SMR operator has knowledge of, yet tolerates a rule violation by a customer operating under its authority, the FCC can properly hold the SMR responsible.

The Association is concerned, however, that the SMR operator not be held responsible for customer violations of which it had no knowledge. The Communications Act provides for the imposition of penalties on "Any person who willfully and knowingly violates any rule, regulation, restriction or condition made or imposed by the Commission under authority of this Act...." 47 U.S.C. §501. To the extent that the SMR licensee neither knew nor had any reason to know of specific customer actions contrary to the Commission's rules, it is not clear that it should be subject to the forfeitures contemplated by the Act as long as it is able to demonstrate that it has taken all appropriate steps to exercise effective operational control over the system and to assure that it is operated in compliance with applicable regulations.



For example, a customer might inform the system operator that his individual control station antenna will be mounted less than twenty feet above the roof of his office building, thus satisfying the "20-foot" rule and FAA reporting requirements. 47 C.F.R. §90.119(a)(ii). Should the customer later move that antenna to a nearby tower without advising the SMR licensee or the FAA, both FCC and FAA requirements will have been violated without the knowledge of the SMR operator.<sup>2/</sup> A similar situation would occur if the customer's mobiles inadvertently wandered into the "quite zone" despite notice from the SMR that they are not permitted to operate in that area. 47 C.F.R. §90.177.

The Association recognizes that SMR licensees may appropriately be expected to assume greater responsibility for overall system compliance if end user licensing is eliminated. It assumes that SMRs will reassess their user contracts and their instruction to customers regarding proper radio usage and pertinent federal regulations with that responsibility in mind. Nonetheless, AMTA would hope that an appropriate balance can be achieved so that SMRs will not be accountable (and subject to forfeitures) for every prohibited customer action when reasonable measures have been taken to promote regulatory compliance.

In an analogous situation, the FCC has recognized certain limitations on the system operator's responsibilities for

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<sup>2/</sup> While not explicit in the Notice, AMTA assumes that each SMR licensee will hold a separate authorization for the mobile and control stations operated by its customers. Any control station which does not satisfy the 20-foot rule would need to be individually identified on that authorization.

customer activities. Subscribers on cellular systems also operate pursuant to the system operator's authorization. That licensee is responsible both for exercising effective operational control over the units with which it communicates, and for their proper installation, maintenance and repair. 47 C.F.R. §22.912(a) However, the cellular operator is exempt from the latter responsibilities if the mobile stations are provided by the customer rather than leased from the operator. Similarly, the rules permit a cellular carrier to refuse or terminate service to a subscriber who used a cellular unit in an airborne aircraft in violation of Rule Section 22.911(a)(1). 47 C.F.R. §22.912(c). The Report and Order in which that rule was adopted did not even contemplate that the cellular operator would be liable for such a subscriber violation. Instead, the FCC elected to rely on Section 503 of the Act which permits forfeiture proceedings against non-licensees or non-applicants for a second violation of FCC requirements upon issuance of a citation in connection with the first violation.<sup>3/</sup>

A similar approach would be appropriate in this situation. The SMR should be responsible for customer activities within its reasonable control or knowledge. If the SMR licensee or an affiliated entity installs or repairs a control station with an antenna that does not comply with the 20-foot rule, but fails to modify the applicable license or ensure necessary FAA notification, the operator may properly be held accountable. If

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<sup>3/</sup> Report and Order, CC Docket No. 88-411, 70 RR 2d 177 (1991).

the action is taken by the customer without the SMR's knowledge after exercising reasonable control, the proper party to be sanctioned is the customer itself.

The Notice queries whether it would be useful in this respect to develop a checklist for SMR licensees to follow to ensure customer compliance with applicable requirements. AMTA supports that proposal, but further recommends that proper use of that checklist by the system operator be consider prima facie evidence that effective system control has been exercised. The Association's preliminary recommended checklist is attached as Attachment 1.

**B. Proposal #2: Loading Data and Filing Requirements for Licensees of Trunked Specialized Mobile Radio Systems**

The Commission has traditionally relied upon end user licensing figures to determine if FCC loading requirements have been satisfied. Notice ¶7. In conjunction with the proposal to eliminate end user licensing, the FCC recommends that loading data consist of the average number of mobile and control stations operating on a licensee's system on the first business day of the month for the six months immediately preceding the filing of an application. Notice ¶9. The figures would be derived from the licensee's business records, including invoices, service agreements, customer list or other business documents kept in the ordinary course of business. Id. The FCC further proposes to eliminate annual SMR loading reports and to require loading verification only when an existing licensee applies for

additional frequencies or an additional system within forty miles and when an existing trunked licensee applies for renewal of a system licensed prior to June 1, 1993.<sup>4/</sup> Notice ¶8.

The Association fully supports the FCC's proposal to calculate loading based on the number of units operational on the system, and to rely on normal business records to support that figure. AMTA suggested a similar approach in its recent Petition. Since there may be no perfect method of evaluating spectrum utilization levels, and none which is immune from manipulation, the number of units actually using a communications facility at a given time is a reasonable indication of activity on the system.<sup>5/</sup> It is unquestionably a more accurate indicia than is the number of units for which customers have obtained licenses.

AMTA recommends that the Commission permit the use of each of the business records identified in the Notice as the basis for loading accreditation, as well as any other reasonable documentation including airtime usage reports. SMRs employ a broad variety of record keeping and accounting methods. There are operators which rely on hand-written invoices with no method

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<sup>4/</sup> AMTA assumes that this portion of the FCC's proposal is not intended to and would not supercede Rule Section 90.631(d) which permits limited rural SMR expansion without any loading requirement, or the long-standing interpretation of Rule Section 90.631(a) whereby each frequency is subject to only one five-year loading requirement with subsequent renewals granted irrespective of system loading.

<sup>5/</sup> AMTA understands this criterion to mean that units which operate on multiple facilities may be included in the loading count of each.

of validating customers, while other employ highly sophisticated systems which generate computerized bills based on each mobile and control station's actual dispatch and/or interconnected airtime usage during the billing period. Some invoice customers on a monthly basis, some quarterly, and some even annually.

In many cases, it will be necessary to rely upon more than a single business record to calculate actual system usage. A number of SMR licensees serve customers in exchange for services such as radio spots or newspaper advertising. Those users will not appear on billing records but will be identified on customer lists. Roaming units of a non-local SMR may be served at no cost and without appearing on a customer list so that the SMRs customers can enjoy comparable roaming capability in the non-local area. Each of these radios utilizes the system, but each may show up on a different business record. For that reason, AMTA encourages the FCC to permit substantial latitude in this area with the understanding that certain approaches would be excluded if demonstrated to be prone to abuse.

AMTA further recommends that the Commission reconsider its proposal to calculate loading based on a six month average. That requirement would fundamentally alter the current loading rule and would impede the ability of fully loaded systems to expand.

The existing loading analysis is essentially a flash-cut review. The FCC considers only authorized units as of the date that the SMR applicant proposes to renew a license in a wait list area, to expand a fully loaded system, or to acquire a new system

within forty miles of a fully loaded facility. The system is particularly beneficial for expanding systems. An SMR which anticipates reaching the necessary loading level by the time its application is processed files at once to leave the smallest possible period of time between system saturation and FCC action on the request for frequency relief.

Under the Commission's proposal, that same system would have to wait considerably longer before being permitted even to apply for expansion capacity. For example, a five channel SMR system with a 350 unit loading requirement might show the following growth pattern:

January 1	-	100 units
February 1	-	130 units
March 1	-	180 units
April 1	-	230 units
May 1	-	275 units
June 1	-	310 units
July 1	-	350 units
August 1	-	390 units
September 1	-	425 units
October 1	-	460 units
November 1	-	500 units
December 1	-	500 units

The current rules would permit that operator to request additional channels on July 1. The proposal in the Notice would require the licensee to wait until October 1, when the six month average equals 350 units, before seeking expansion capacity. Systems would typically have to become significantly overloaded before qualifying to add frequencies, a result which is clearly contrary to the public interest.

Therefore, AMTA urges the Commission to retain its existing rule regarding SMR loading. Operators should be permitted to

request additional frequencies or an additional system within 40 miles, or to be issued the first five year renewal if the system loading meets or exceeds the applicable loading requirement at that time.

The Association does agree with the proposal to drop the Section 90.651(a) and (b) loading reporting requirements. To the best of AMTA's knowledge, these requirements are not being enforced by the FCC, are virtually unknown within the SMR industry, and serve no useful purpose. They should be deleted.

**C. Proposal #3: Relaxation of Requirements for Trunked Specialized Mobile Radio Licensees to Modify Licenses**

In its Notice, the Commission proposes to amend Rule Section 90.135(a)(5) to exempt trunked SMR licensees from the requirement to modify their authorizations to reflect changes in the number or location of control or mobile transmitters. Notice ¶11. AMTA agrees that it would be both unnecessary and extraordinarily burdensome, indeed comparable to end user licensing, to require a trunked SMR to modify its authorization each time a customer added or deleted mobiles or changed a control location.<sup>6/</sup> However, as discussed infra, AMTA assumes that the SMR's authorization would require modification if a user intended to operate a control station which did not meet the 20-foot rule. The Association also concurs with the FCC's determination that

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<sup>6/</sup> Again, AMTA assumes that each SMR system operator will need to obtain a license for the anticipated number of mobile and control stations to be used by its customers over the five year license term. See, footnote 2, supra.

the different channel exclusivity provision for conventional SMR systems demand retention of the 90.135(a)(5) requirement for such licensees.

#### VI. CONCLUSION

AMTA supports the Commission proposal to eliminate SMR end user licensing. The substitution of an SMR licensee reporting requirement to verify system loading will free substantial public and private resources to be used for more productive purposes. The regulatory structure proposed is also more reflective of today's SMR environment in which multi-site capability has proven beneficial for a broad segment of the SMR customer population.

AMTA therefore encourages the Commission to proceed promptly to adopt the instant proposal as modified by the Comments herein.



TRUNKED SMR CUSTOMER CHECKLIST

Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Person \_\_\_\_\_

Telephone Number \_\_\_\_\_

Eligibility

Equipment Information

No. of Mobiles \_\_\_\_\_

No. of Control Points \_\_\_\_\_

No. of Control Stations \_\_\_\_\_

20 Foot Rule

FAA Notification

NEPA Requirements

Operating Area

Mexican Border Area

Canadian Border Area

Quiet Zone

Operating Requirements

Use by identified customer

Use in permissible manner

- o Efficient use of limited spectrum
- o No obscenity, etc.

Prohibited Uses

- o Transmission of broadcast program material
- o Rendition of common carrier service

**CERTIFICATE OF SERVICE**

I, M.A. Spinks, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify, that I have on this 11th day of June, 1992, caused to have hand delivered a copy of the foregoing Comments to the following:

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